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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,642	06/11/2001	John Albert Hockman	01-016	3119

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Marvin J. Powell
1 Highland Avenue
Bethlehem, PA 18017

EXAMINER

COLAIANNI, MICHAEL

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 07/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/878,642

Applicant(s)
Hockman

Examiner
Michael Colaianni

Art Unit
1731



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jun 11, 2001
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, and 4-9 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 appears to be a vague listing of various elements in forming a glass batch.

Moreover, claim 1 refers to "other glass components" which is deemed indefinite.

Claim 3 refers to a "z" value but there is no "z" present in the formula.

Claims 5 and 6 refer to "said second glass batch" and "said comparative composition" which lack antecedent basis.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tooley, Handbook of Glass Manufacture Volume II, pp. 189 in view of Fairchild et al. 6287378.

Tooley teaches that it is known to make a fiberglass composition having mixture of calcium oxide, magnesium oxide and boron oxide (Table XIX A-III, row labeled "Fiber Glass"). Moreover, Tooley teaches that the magnesium oxide content of the glass is 4.4% (see Table XIX A-III) which is deemed to be included in applicant's "about zero" claim language. It is noted that in the only example provided by applicant in his Written Description, the magnesium oxide (MgO) content is at 17.8%. Interpreting claim 2 in light of applicant's solitary example, "about zero" includes a MgO concentration of 17.8%. Thus, Tooley's teaching of 4.4% MgO must also be "about zero." However, Tooley does not teach the source of the calcium oxide or magnesium oxide.

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However, Fairchild et al. teach that it known in the glass making art to use diopside, a calcium magnesium silicate mineral to make fiber glass compositions (col. 3, lines 20-33). Moreover, Fairchild teaches heating the glass composition to render it molten, refining the molten mass and then shaping to form a glass product (col. 10-11, lines 56-67, 1-12, col. 1, lines 48-51).

It would have been prima facie obvious at the time the invention was made to combine Fairchild et al.'s teaching of using diopside as the calcium magnesium silicate compound with Tooley's fiberglass composition because Fairchild et al. teach that diopside may be used in in making fiberglass compositions (col. 3, lines 20-33). Moreover, using diopside would prevent the extra step of adding the calcium oxide and magnesium oxide separately.

6. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tooley, Handbook of Glass Manufacture Volume II, pp. 189 in view of Fairchild et al. 6287378.

Tooley substantially teaches applicant's claimed invention. See the 103(a) rejection above for Tooley's teachings. However, Tooley does not explicitly teach the subject matter of claims 4-8.

However, as noted above Fairchild et al.'s teaching of using diopside, a calcium magnesium silicate, as the calcium oxide and magnesium oxide source for making fiberglass and the obvious combination of using Fairchild's diopside with Tooley's render's claims 4-8 obvious. This is so because the claimed composition is the same, so the properties flowing from the same composition must, obviously, be the same.

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It would have been prima facie obvious that Tooley in view of Fairchild's glass composition would have the same properties claimed in claims 4-8 because the compositions are the same and thus, obviously, must have the same properties.

Information Disclosure Statement

7. The information disclosure statement filed September 10, 2001 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed.

No copy of JP 9-285849 was provided. Accordingly that reference has been lined-through and was not considered by the Examiner.

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Allowable Subject Matter

8. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. The following is a statement of reasons for the indication of allowable subject matter: none of the prior art taught a calcium magnesium silicate using making glass batch having the claimed formula with subscripts within the claimed ranges.

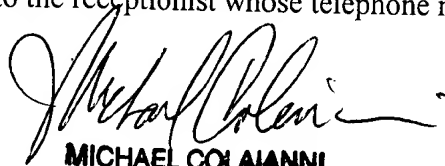
Conclusion

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Colaianni whose telephone number is 703-305-5493. The examiner can normally be reached on Monday to Friday from 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin, can be reached on (703) 308-1164. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7115.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

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June 27, 2002


MICHAEL COLAIANNI
PRIMARY EXAMINER